

This record is a partial extract of the original cable. The full text of the original cable is not available.

C O N F I D E N T I A L SECTION 01 OF 03 BAGHDAD 002807

SIPDIS

E.O. 12958: DECL: 06/02/2011

TAGS: [ECPS](#) [ECON](#) [IZ](#)

SUBJECT: NCMC BOARD UNDER QUORUM

REF: A. 04 BAGHDAD 2296

[1](#)B. BAGHDAD 1800

[1](#)C. BAGHDAD 2191

Classified By: Economic Minister Counselor Anne Derse for reasons 1.4 (

b) and (d).

[1](#)1. (C) SUMMARY: Membership of the National Communications and Media Commission (NCMC) Board of Commissioners is below the legally required quorum and, therefore, its decisions are subject to legal challenge. NCMC Director General (who prefers to be known as the CEO) Othman plans on presenting a list of commissioner candidates to President Talabani in July. The UK's Media Development and Advisory Team (MDAT) contract has been extended for 3 months and they will immediately begin lobbying the ITG for the appointment of a full nine member NCMC Board of Commissioners, which must be confirmed by the TNA. We will support MDAT's efforts and focus on the telecom initiatives pending before the NCMC. END SUMMARY

ORDER 65 REQUIRES QUORUM

[1](#)2. (SBU) CPA Order 65 created the Iraqi Communications and Media Commission (since re-named the NCMC), the Board of Commissioners (&the Board8) of which consists of nine members. Decisions of the Board are made by majority vote, "provided that at least six (6) of the members are present and vote." The Board has been without the legally required quorum since November 23, 2004, when former PM Allawi forced the resignation of four of the nine commissioners, leaving the Board with five commissioners (REF A). In the interim, former NCMC Commissioner Masum's recent appointment as Minister of Communications leaves the Board with only 4 members. Therefore, any decisions by the current Board are subject to legal challenge. We have pointed this out to Othman and discussed it with senior advisers to Prime Minister Ja,afari, since only Ja,afari has the authority to appoint NCMC commissioners subject to approval by majority vote of the Transitional National Assembly (REF B).

[1](#)3. (SBU) In addition, Order 65 requires monthly meetings. Board members who fail to participate in three or more successive meetings are subject to dismissal. We have been unable to verify whether regular monthly meetings occur, but if they do, there is no record or procedure in place memorializing the meetings and the decisions made. Again, challenging current board members' right to their appointed seats will inflict further damage to the NCMC. We have discussed the situation with Othman who agreed with the necessity of complying with Order 65.

NCMC INITIATIVES SUBJECT TO CHALLENGE

[1](#)3. (SBU) The NCMC has several critical initiatives scheduled for completion in 2005. The Wireless Local Loop (WLL) RFI and the mobile license re-tender are the most visible. The mobile license re-tender, in particular, has been specifically designed and advertised to attract high level foreign investors and is expected to bring in tens of millions of dollars per bidder. The greatest vulnerability to the NCMC is the challenge to its authority to grant licenses to operate and assign spectrum to new entrants and winning bidders. For example, the mobile licensing re-tender, if not conducted according to Order 65, is open to legal challenge. A legal challenge to the award of mobile licenses in December would create uncertainty for mobile customers, the industry and irreparably harm the NCMC.

NCMC CEO PLANS TO SUBMIT LIST TO PM

[1](#)4. (SBU) NCMC CEO Othman told us June 22 that he plans to submit a list of commissioner candidates to President Talabani at the beginning of July. The list includes himself in the combined position of the Chair of the Board and Acting CEO. Othman stated that while he appreciated our help, he did not want the US involved in picking candidates and if he needed help "I will come to you" (REF C). Order 65 prohibits

the Director General (CEO) from holding any other government positions, to include serving as a member of the Board, and it is clear that the intent of the Order contemplates a clear separation between oversight and implementation.

UK MDAT CONTRACT EXTENDED FOR THREE MONTHS

15. (SBU) The USG and UK have coordinated closely on the creation and development of the NCMC as an independent regulatory body for telecommunications and broadcast. The British Foreign Service Office has been responsible for the media and broadcast institutional framework at the NCMC through the MDAT, while the USG is concentrating its technical advice on the telecommunications area. Upon learning a few weeks ago that the MDAT's contract would not be renewed by the UK, the Charge sent a letter to UK Ambassador Patey suggesting that continued funding and support of the MDAT through the December elections is important. MDAT informed us on June 28 that their contract is renewed for 3 months. We will continue to pursue an extension of their services through the election.

UK MDAT WILL LOBBY FOR FULL NCMC BOARD

16. (C) MDAT's first priority is to get the ITG to appoint a full complement of nine commissioners to the Board, in accordance with Order 65, thereby ensuring that NCMC decisions are legal and less vulnerable to challenge by the industry. Simon Haselock, the lead member of the MDAT, stated that MDAT's strategy is to educate the ITG on the importance of the NCMC, its role in bringing in foreign investment and the vulnerability of all of its decisions, particularly the mobile re-tender, while operating without a quorum. MDAT will not recommend particular candidates, but will stress the need to meet the requirements set out in Order 65. MDAT will not oppose or support Othman's current position or his quest to be Chair, other than to advise the ITG that he cannot, without violating Order 65, be both a commissioner, chair or otherwise, and CEO at the same time. (NOTE: Order 65 states that the CEO of the NCMC may not hold any executive or legislative position, appointed or elected, at any level of government. END NOTE).

17. (C) Othman will initially present his suggested list of commissioners to fellow Kurd, President Talabani, in order to enlist his help with the PM. Haselock, therefore, met with President Talabani's Chief of Staff, Kamran Karadaghi, on June 29, to discuss the need for a properly established board. Karadaghi stated that he is familiar with Order 65. He is also familiar with Othman and told Haselock he is well aware of Othman's management style alluding to, according to Haselock, Othman's micromanagement of issues. Karadaghi agreed that the NCMC is an important regulatory institution and must be made to fully comply with the law so that future decisions are not challenged, the mobile re-tender among the most important. Haselock told Karadaghi that Othman intends to submit a list of candidates with himself in the combined Chair/CEO role. Karadaghi agreed that the combined role was inconsistent with the intent of Order 65 and that he would counsel against it. Karadaghi agreed to use his influence to assist in the process of appointing new commissioners.

18. (C) MDAT will also enlist the assistance of Minister of Communication, Jowan Masum, as an advocate within the government for a NCMC that is operating in full accord with existing law. Karadaghi agreed with Haselock's strategy to engage Masum on this issue.

USG WILL COMPLEMENT MDAT'S EFFORTS

9.(C) We will assist MDAT in its efforts to educate the ITG on the need to appoint five commissioners to the NCMC and create a full complement of board members as set out in Order 65. Our strategy will complement MDAT's focus on educating the ITG on what is required by current law and the risks attendant to NCMC decisions made while there is no legal quorum. Our focus will remain on telecommunications, while MDAT focuses on the risk to broadcasting/media decisions.

10. (SBU) We plan to use the following talking points:

--Order 65 requires six sitting and voting commissioners for a quorum, but given the substantive challenges and the amount of work in front of the NCMC today, we recommend five new appointments to create a fully staffed Board.

--NCMC has several initiatives that will increase local telecommunications penetration. The mobile license re-tender will bring in millions to the treasury while offering world-class mobile services to customers throughout Iraq.

Both are vital to the economic growth of the country and legal challenges to the NCMC's decisions on these initiatives will severely impede that growth.

--The eligibility criteria for commissioner candidates must be consistent with Order 65.

--Order 65 clearly contemplates a separation between executive and administrative functions and offices, and commissioners should not hold any other NCMC positions.

--Order 65 defines that the PM recommends candidates and the Transitional National Assembly ratifies by simple majority. This process, because it is based on consensus building, is time consuming and must start immediately.

--NCMC's Broadcast Program Code of Practice will be essential in the upcoming election. This code prohibits all broadcasters (including terrestrial and satellite) from inciting violence or public disorder, transmitting terrorist messages, or airing unfair or inaccurate broadcasts. A legal challenge on the validity of the NCMC's authority would impede enforcement.

--NCMC established a code for media during election campaign periods. This code, which was in effect during the period leading up to the January 2005 elections, requires all media to report on elections accurately and fairly and requires broadcast media to provide equitable and balanced coverage of all political parties. Again, a legal challenge on the validity of the NCMC's authority would impede enforcement.

11. (C) COMMENT: Our support of MDAT's efforts to engage the government on the need to nominate and confirm five commissioners to the Board is warranted despite Othman's request that we not get involved. First, Othman's concerns over US involvement stems from his fear that we will challenge his choices and the combined Chair/CEO role he desires. Our joint strategy with MDAT is not to get involved in any way on individual nominees but to educate the ITG on the requirements set out in Order 65. We will continually stress the need to comply with the law. Second, based on experience with Othman, he will not move quickly enough, or be tenacious enough, to accomplish the task in time for the mobile license re-tender. We need to convince him that it is appropriate for us to engage the government on an issue of compliance with Iraqi law, especially in a situation where the viability of an important institution is at stake. END COMMENT.

Satterfield